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AT ROANOKE, VA
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) Civil Action No. 7:15cv456

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By: Hon. Michael F. Urbanski

) Chief United States District Judge

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Cook previously based a motion for summary judgment on the same purported admissions. Mot. Default J. & Summ. J., ECF No. 74. The magistrate judge considered Cook's argument, and while he ultimately recommended denying summary judgment on other grounds, he noted that unpublished decisions in the Fourth Circuit "have allowed late responses or a motion for extension of time to serve as the functional equivalent of a motion under Rule 36(b)." R. & R., ECF No. 106, at 4 n.6 (quoting Estate of Jones v. City of Martinsburg, W.V., 655 F. App'x 948, 949–50 (4th Cir. 2016)). The court adopted the Report & Recommendation in its entirety. Order, ECF No. 114. The court still agrees with the

magistrate judge: Allowing the late admissions to serve as the functional equivalent of a motion to withdraw the automatic admissions “promote[s] the presentation of the merits of the action.” Fed. R. Civ. P. 36(b). Moreover, the court sees no prejudice to Cook in allowing the late admissions to serve as a motion to withdraw the automatic admissions, as Cook was aware of the contents of the late admissions for months before trial. Accordingly, the court holds that the filing of the late admissions was the functional equivalent of a motion under Rule 36(b), which the court grants.

Additionally, while Cook complains that McQuate untimely filed the admissions, Cook is equally guilty of late filings. See Mot. Leave Serve Late Witness & Ex. List, ECF No. 110 (moving on January 9, 2018 to file documents with court that were required to be filed on January 3, 2018); Mot. Leave Late Submission Proposed Jury Instructions, ECF No. 127 (moving on January 22, 2018 to file jury instructions with the court that were required to be filed on January 18, 2018). The court finds that it would be inequitable to punish McQuate for late filings while allowing Cook’s late filings.

Accordingly, Cook’s Motion is **DENIED**.

Entered: 07-23-2018
/s/ Michael F. Urbanski
Michael F. Urbanski
Chief United States District Judge